

**Submission
No 372**

INQUIRY INTO IMPACT OF THE WESTCONNEX PROJECT

Organisation: Valuer General

Date Received: 31 August 2018

Rev the Hon Fred Nile MLC
Chair
Inquiry into the impact of the WestConnex Project
Public Accountability Committee
Legislative Council
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Mr Nile

Submission – Inquiry into the impact of the WestConnex Project

Thank you for the opportunity to provide this submission.

This submission is to assist the Public Accountability Committee understand the role of the Valuer General in the compulsory acquisition of property for the WestConnex Project.

Please refer to the Terms of reference 1(d) the compulsory acquisition of property for the project.

Valuer General's role in the compulsory acquisition process

The Valuer General is an independent statutory officer, appointed by the Governor of New South Wales.

This independence is important so there is clear separation between the acquisition of land by government for a public purpose and the determination of compensation to be paid to the land owner¹.

The Valuer General only becomes involved in the compulsory acquisition process when agreement to purchase the land cannot be reached between a land owner and an acquiring authority.

When a land owner and an acquiring authority are unable to negotiate the purchase of the land, an acquiring authority can compulsorily acquire land for a public purpose.

The Valuer General is required by the *Land Acquisition (Just Terms Compensation) Act 1991* to independently determine the amount of compensation to be offered by the acquiring authority to the land owner.

Importantly, the Valuer General does not act for either the land owner or the acquiring authority.

The Valuer General is responsible for:

- ensuring land owners are fairly compensated when their land is compulsorily acquired
- providing an independent, fair and transparent process for determining the amount of compensation.

I have included a copy of the brochure *Compulsory Acquisition NSW Valuer General's role* **(TAB A)**. This brochure is provided to land owners following the issue of the proposed acquisition notice.

¹ References to "land owner" also refer to lessee interests.

Compulsory acquisition legislation

The *Land Acquisition (Just Terms Compensation) Act 1991* (the Act) requires the Valuer General to determine compensation where land is compulsorily acquired (section 47).

Compensation must be determined in accordance with the Act.

Section 54 of the Act requires that compensation must be such amount, having regard to all relevant matters under Part 3, to justly compensate the land owner for the acquisition of the land.

The relevant matters in determining compensation are:

- the market value of the land
- any special value to the land owner
- any loss attributable to severance
- any loss attributable to disturbance
- the disadvantage resulting from relocation
- any increase or decrease in the value of any other land owned by the land owner at the date of acquisition, which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.

Valuer General Policies

The Valuer General sets the standards and policies for the determination of compensation.

The policy *Compensation following compulsory acquisition* guides valuers on the methods to use, and factors to consider, when determining compensation for the compulsory acquisition of land or an interest in land. The policy also addresses transparency and communications with land owners.

This policy was first issued in December 2014 and so was in place to guide the compulsory acquisition process for the majority of determinations of compensation for WestConnex. The policy was updated in August 2017 following amendments to the *Land Acquisition (Just Terms Compensation) Act 1991* and administrative changes to address the Government response to the *Review of the NSW Land Acquisition (Just Terms Compensation) Act 1991* and Housing Acquisition Review.

The current policy (2017) and previous policy (2014) are attached **(TAB B)**.

Customer Service

The Valuer General's approach when determining compensation is based on openness and fairness. Land owners are encouraged to ask questions, provide information and clarify concerns during the determination of compensation process.

Valuers representing the Valuer General are required to contact the land owner or their representative in all compulsory acquisition matters. Conferences are available at any time during the determination of compensation as well as after the determination of compensation is issued.

Role of Valuation Services

Valuation Services, part of Property NSW, manages the determination of compensation process on behalf of the Valuer General, under delegation. Section 8 of the *Valuation of Land Act 1916* provides for the Valuer General to delegate functions (other than this power of delegation).

A specialist Just Terms Compensation unit exists within Valuation Services which manages the compensation process and determines compensation on behalf of the Valuer General.

Generally the valuations for determinations of compensation are undertaken by contract valuers. The valuations are reviewed by senior valuers within Valuation Services who check all aspects of the valuation including the assessment of the market value of the land and supporting sales evidence before the valuation is used for determining compensation.

Key responsibilities of the unit include to:

- determine compensation under delegation from the Valuer General
- ensure determinations of compensation comply with legislation, policies, professional standards and delegations
- ensure determinations are accurate, consistent and supported by evidence
- ensure the decisions made in determining compensation are fair, transparent and accessible to the relevant parties
- ensure land owners understand the compulsory acquisition process and the role of the Valuer General
- provide land owners with a procedurally fair and transparent process, with the opportunity to ask questions and raise concerns.

Compulsory Acquisition Process

Prior to the Valuer General's involvement in the compulsory acquisition process, there is usually a negotiation period between the land owner and the acquiring authority.

Amendments to the *Land Acquisition (Just Terms Compensation) Act 1991* made following the Government response to the *Review of the NSW Land Acquisition (Just Terms Compensation) Act 1991 and Housing Acquisition Review* provided a fixed six month negotiation period prior to the issue of the proposed acquisition notice (PAN). This change commenced from 1 March 2017.

The issue of a PAN by an acquiring authority initiates the Valuer General's involvement in the compulsory acquisition process. At this time, Valuation Services will contact the land owner to explain the Valuer General's role, provide information and introduce their coordinator who is their contact point throughout the process and will assist with answering questions, providing information and organising conferences.

During the PAN period there is further opportunity for land owners and the acquiring authority to reach agreement and negotiate the sale of the property. If agreement is reached, the Valuer General immediately stops work on a matter.

If the acquisition of land cannot be finalised through negotiation, the land is compulsorily acquired by the acquiring authority. This occurs when the acquiring authority publishes an acquisition notice in the NSW Government Gazette.

With publication of the gazette notice, the Valuer General is required to provide the determination of compensation to the land owner and acquiring authority within 45 days.

Determination of Compensation Process

When assessing the amount of compensation, a full valuation report is prepared. The report:

- shows what has been considered by the valuer which may include other professional reports or advice
- addresses the concerns recorded by the land owner on the section 39 claim for compensation form
- addresses any other valuation issues raised by either the land owner or acquiring authority during the valuation process
- resolves any reasonable doubt in relation to the determination of compensation in favour of the land owner
- explains how the amount of compensation was determined.

During the determination of compensation process, the valuer responsible for preparing the valuation report will inspect the property with the land owner, or their representative, and address issues and concerns.

The Valuation Services coordinator is available to discuss issues with the land owner or their representative, and the acquiring authority at any time during the process. This presents opportunities to provide additional submissions, discuss concerns, ask questions and, where possible, attempt to settle any disagreements over matters of fact prior to the determination being made.

When compensation is being determined, information provided by both the land owner and the acquiring authority as well as reports independently requested on behalf of the Valuer General are considered.

All information considered in the determination of compensation process is exchanged between the parties.

In December 2016, the Valuer General commenced phasing in the issue of a preliminary valuation report showing the amount of compensation, to both the land owner and acquiring authority for consideration and feedback.

As determinations of compensation are a final decision, parties are encouraged to make submissions, clarify and where possible, resolve any issues prior to completion of the determination. Conferences are available throughout the determination process including following the issue of the determination.

After any feedback or concerns about the preliminary valuation report have been addressed and finalised, the Valuer General's delegate determines compensation.

The determination of compensation and valuation report is then issued to the land owner and the acquiring authority. The issue of the determination of compensation and valuation report is the final part of the Valuer General's formal role in the determination of compensation process.

Determination of compensation

The determination of compensation shows the amount of compensation as determined by the Valuer General, payable by the acquiring authority to the land owner.

The acquiring authority must issue the land owner with a compensation notice with the determination of compensation.

The notice also advises the land owner that they have the right to object to the amount of compensation offered.

WestConnex Projects

Roads and Maritime Services (RMS) is the acquiring authority for the WestConnex project and is responsible for the management of the acquisition process.

The Valuer General's involvement with WestConnex started in September 2014. There are a small number of matters still to be resolved.

The Valuer General has commenced or completed determinations of compensation that were part of the following projects associated with WestConnex:

1. WestConnex & WestConnex Stage 2
2. WestConnex Motorway Stage 2B
3. WestConnex M4 East Motorway
4. WestConnex Motorway Stage 1(b) M4 East
5. WestConnex Motorway Stage 2 M5 East Airport Link
6. M5 East Airport Link Stage 2
7. WestConnex M5 Motorway
8. WestConnex Motorway Stage 2
9. WestConnex Stage 2 M5 Motorway New
10. WestConnex (M5 East) Motorway
11. WestConnex Stage 3 – M4-M5 Motorway
12. WestConnex Enabling Roads Project
13. WestConnex Stage 3 – M4-M5 Motorway Link Project

- the issue of 149 determinations of compensation
- commencement of 597 matters following the issue of the PAN
- the cessation of 448 matters where a determination of compensation was no longer required

the determination of \$318,458,271 in compensation following compulsory acquisition.

- WestConnex projects where work commenced and/or determinations of compensation were issued
- location, type of land and interests for WestConnex projects where determinations of compensation were issued.

Yours sincerely

31 August 2018



Valuer General

COMPULSORY ACQUISITION

NSW Valuer General's role

www.valuergeneral.nsw.gov.au



Title: Compulsory Acquisition NSW Valuer General's Role

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Office of the Valuer General

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Any enquiries relating to the policy may be addressed to the Office of the Valuer General at
feedback@ovg.nsw.gov.au

Disclaimer

This document has been prepared by the Office of the Valuer General for general information purposes. Recipients may wish to obtain their own independent advice before making any decision based on this information.

Acknowledgements

Author: Office of the Valuer General

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NSW Valuer General's role

Governments acquire land and interests in land for public purposes*. They may acquire the whole property, part of a property or an interest in the land including easements for power lines, sewer or water.

In NSW, the acquisition of land is undertaken in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

Most land is acquired through negotiation. Compulsory acquisition occurs when a purchase cannot be made by agreement.

Valuer General

The Valuer General is appointed by the Governor of New South Wales as a statutory officer and acts independently of both State and local government.

This independence is important so there is a separation between the acquisition of land by government for a public purpose and the determination of compensation.

Valuer General's responsibilities

When an acquiring authority** and land owner*** are unable to negotiate the purchase of the land, an acquiring authority can compulsorily acquire land for a public purpose.

The Valuer General is required by the *Land Acquisition (Just Terms Compensation) Act 1991* (the Act) to independently determine the amount of compensation to be paid by the acquiring authority to the former land owner.

Importantly, the Valuer General does not act for either the land owner or the acquiring authority.

The Valuer General is responsible for:

- ensuring land owners are fairly compensated when their land is compulsorily acquired
- providing an independent, fair and transparent process for determining the amount of compensation.

The Valuer General's approach when determining compensation is based on openness and fairness.

- Land owners are encouraged to ask questions, provide information and clarify concerns.
- All valuation information considered when determining compensation is shared between the land owner and acquiring authority.
- The preliminary report showing the amount of compensation is provided to both the land owner and acquiring authority for consideration and feedback before the final determination of compensation is issued.

* reference to "acquisition of land" will also include interests in land.

** government organisation acquiring land.

*** land owner includes anyone with an interest in the land.

Valuation Services

Valuation Services, part of Property NSW, manages the valuation system on behalf of the Valuer General. The Valuer General sets the standards and policies for the determination of compensation and oversees the work of Valuation Services.

Who acquires land

In NSW, state and local government organisations, including state owned corporations, can acquire land for public purposes. The government organisation acquiring the land is commonly called the acquiring authority.

The acquiring authority manages the acquisition process including all negotiations with the land owner.

Acquisition by agreement

The Act encourages the acquiring authority to purchase the property by agreement. When a property is acquired by agreement, the acquiring authority and the land owner agree on the amount of compensation, and the Valuer General is not involved.

The majority of land acquisitions by government are made by negotiation and agreement.

A period of six months is generally set for negotiation and purchase by agreement before compulsory acquisition can commence. At least one face to face meeting must be held between the land owner and acquiring authority during the negotiation period.

When negotiating the amount of compensation to be paid, section 55 of the Act lists relevant matters

to be considered. These are the same whether the acquisition is by negotiation and agreement (except hardship cases, Division 3 of the Act) or by compulsory acquisition. The requirements of section 55 are listed on page 8.

To assist land owners during this negotiation process, the acquiring authority will cover reasonable costs associated with the negotiation including professional valuation and legal advice. The acquiring authority can advise what are considered reasonable costs.

The Act provides for compensation to be in the form of land or the carrying out of works if agreed to between the land owner and the acquiring authority.

Compulsory acquisition

Proposed acquisition notice

When land cannot be acquired by agreement, the Governor of New South Wales can approve the compulsory acquisition of the land.

The issue of the proposed acquisition notice to the land owner by the acquiring authority is the first formal step in the compulsory acquisition process.

The acquiring authority is also required to notify the Valuer General of the proposed acquisition.

Valuation Services on behalf of the Valuer General now becomes involved in the acquisition process. A coordinator is appointed to help you with the process and assist you with any questions or concerns.

Our communication

After the proposed acquisition notice is issued, Valuation Services will write to you to:

- explain the Valuer General's role and determination of compensation process
- introduce your coordinator who can assist you with answering questions, providing information and organising conferences
- advise you about accessing professional assistance
- remind you to complete your claim for compensation (section 39 claim for compensation form).

An acquiring authority cannot compulsorily acquire land unless a proposed acquisition notice has been given to the land owner.

The proposed acquisition notice includes:

- a description of the land
- the authority of the State proposing to acquire the land
- the period of time in which the land will be compulsorily acquired.

The land owner and acquiring authority can continue to negotiate the purchase during this stage of the compulsory acquisition process. If agreement is reached, the acquisition may be finalised by a contract and transfer or a formal agreement under section 30 of the Act.

In some cases, following receipt of the proposed acquisition notice

Valuation Services will commence work on the determination of compensation before the land is compulsorily acquired. This may include preliminary discussions with land owners. No valuation information is shared at this time as the land owner and acquiring authority may still reach agreement.

Early commencement assists with meeting statutory time frames for the delivery of the determination of compensation and gives land owners time to provide information and have their issues and concerns addressed.

Section 39 claim for compensation form

This form is to be completed by the land owner after the proposed acquisition notice has been issued by the acquiring authority.

When completing the form land owners should include the information, issues and concerns they want the valuer to consider when completing the valuation report for the determination of compensation.

Land owners should provide their completed form to:



Property NSW

Valuation Services

Just Terms Compensation

PO Box 252

PARRAMATTA NSW 2124



Just_Terms@property.nsw.gov.au

Section 39 forms are available from the acquiring authority or from www.valuergeneral.nsw.gov.au

For more information about the section 39 claim for compensation form go to page 13.

Acquisition notice

If the acquisition of land cannot be finalised through negotiation, the land is compulsorily acquired by the acquiring authority.

This occurs when the acquiring authority publishes an acquisition notice in the NSW Government Gazette.

This normally occurs after 90 days (and up to 120 days) from the issue of the proposed acquisition notice.

When an acquisition notice is published, it means:

- the Governor of New South Wales has approved the compulsory acquisition of land
- the Valuer General is required to make a determination of compensation
- ownership of the land transfers to government.

However, the land owner is generally entitled to remain in occupation of any building that was their principal place of residence or business for three months, unless a shorter period of time is approved by the minister responsible for the acquiring authority.

Enquiries concerning occupation after the acquisition should be made with the acquiring authority.

Determination of compensation

When land has been compulsorily acquired, the Valuer General is required to independently determine

the amount of compensation the acquiring authority must pay the land owner.

When assessing the amount of compensation, a full valuation report is prepared by a qualified, experienced and independent valuer who has no conflict of interest.

The report:

- shows what has been considered by the valuer
- addresses the concerns recorded by the land owner on the section 39 claim for compensation form
- addresses any other valuation issues raised by either the land owner or acquiring authority during the valuation process
- resolves any reasonable doubt in relation to the determination of compensation in favour of the land owner
- explains how the amount of compensation was determined.

All valuation information provided by the land owner, acquiring authority or sourced by the Valuer General for the valuation report will be shared between the land owner and acquiring authority.

Independent quality assurance is undertaken by senior valuers on behalf of the Valuer General who review the valuation report, checking all aspects of the determination including the assessment of the market value of the land and supporting sales evidence.

Factors considered in making the determination

Valuers must consider:

- the requirements of section 55 of the Act which sets out the relevant matters to be considered:
 - (a) the market value of the land on the date of its acquisition
 - (b) any special value of the land to the person on the date of its acquisition
 - (c) any loss attributable to severance
 - (d) any loss attributable to disturbance
 - (e) disadvantage resulting from relocation (formerly called solatium)
 - (f) any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired

Definitions for these terms are on page 13 under section 39 claim for compensation form.

- all information provided by the land owner
- all information provided by the acquiring authority.

Our communication

After the land has been compulsorily acquired, Valuation Services will write to you:

- about determining the amount of compensation
- to share all valuation information used in the valuation report
- about how to get more information or have a conference.

You are encouraged to ask questions, raise concerns and provide information during the valuation process.

Conferences

Conferences are available throughout the process to resolve issues and concerns before the determination of compensation is issued. These can be arranged through the appointed coordinator.

Preparing the valuation report

The valuer preparing the valuation report must contact:

- you or your representative

This contact is an opportunity for you to discuss your claim for compensation form, raise any issues, ask questions and provide any further information you would like considered as part of the claim.

The valuer will also be able to assist with information about the determination of compensation process.

- the acquiring authority to discuss any issues they would like considered when undertaking the valuation.

All valuation information considered for the valuation report is shared between the parties.

Preliminary valuation report

Before the determination of compensation is finalised, Valuation Services will send you and the acquiring authority the preliminary valuation report to review. The report shows the amount of compensation and how it was determined. You have 15 days to provide feedback.

As determinations of compensation are a final decision, any concerns should be addressed before the determination of compensation is issued.

Issuing the determination of compensation

After the preliminary valuation report has been finalised Valuation Services issue the determination of compensation (example on page 10) together with the valuation report to you and the acquiring authority.

The issue of the determination of compensation and valuation report is the final part of the Valuer General's formal role in the determination of compensation process.

Valuation Services are available to answer any questions about the valuation report and determination of compensation.

Determination of compensation

The determination of compensation shows the amount of compensation payable as determined by the Valuer General and includes the full valuation report.

Time frame

The Valuer General is required to provide the determination of compensation to the land owner and acquiring authority within 45 days. An extension to this time frame can be approved by the minister.

Compensation notice

The acquiring authority must issue the land owner with a compensation notice which includes the determination of compensation.

The compensation notice officially notifies the land owner that the land has been compulsorily acquired and provides the offer to pay the amount of compensation determined by the Valuer General.

The notice also advises the land owner that they have the right to object to the amount of compensation offered.

Agreement with determination

When the land owner agrees to the amount of compensation determined, the acquiring authority is required to pay the amount to the land owner within 28 days of receipt of a deed of release.

Example of determination of compensation issued by the Valuer General

DETERMINATION OF COMPENSATION

Land Acquisition (Just Terms Compensation) Act 1991
Valuation of Land Act 1916



Valuer General

Valuer General's reference: VOG-JT-003

Any liability for the GST is a factor in the market for property and is therefore embedded in the land's market value as defined in section 56 of the Land Acquisition (Just Terms Compensation) Act 1991, and also in allowances for certain other costs. Consequently this determination is GST inclusive where applicable.

The determination of compensation has not taken into account any existing or prospective Native Title claim over the described acquired land. It is recognised that should a Native Title interest in the land be substantiated at some future time then compensation may be considered at that time in respect to that interest in the land affected by the compulsory acquisition.

The valuation report VOG-JT-003 that was considered in making this determination is annexed. For more information on the report, please contact the Just Terms Compensation Unit via email at Just_Terms@property.nsw.gov.au or telephone 02 9860 5100.

Signature

for Simon Gilkes, NSW VALUER GENERAL

Interest is payable on the amount of compensation from the date the land is acquired until payment is made.

Disagreement with determination

Land and Environment Court

Land owners not satisfied with the amount of compensation determined by the Valuer General and offered to them by the acquiring authority can lodge an objection with the Land and Environment Court.

Court proceedings involving claims for compensation are between the acquiring authority and the land owner.

Objections need to be lodged within 90 days of receiving the compensation notice. If an objection is not lodged within 90 days the offer of compensation is deemed as accepted.

For more information about the Land and Environment Court, visit their website at www.lec.justice.nsw.gov.au.

The court can be contacted at:



Level 4, Windeyer Chambers
225 Macquarie Street
Sydney NSW 2000



02 9113 8200



lecourt@agd.nsw.gov.au

Owner initiated acquisition in cases of hardship

Before an acquiring authority acquires privately owned land, the land would usually be designated for acquisition for a public purpose. This means that it is intended that the land will be acquired at some future time. In some circumstances there may be an extended period of time between designation and acquisition. For example, the acquiring authority may need time to obtain further development approvals or further funding for development.

A land owner may request an acquiring authority purchase all or some of the property that is designated for a public purpose.

The land owner is required to show that:

- it has become necessary to sell the property for pressing personal, domestic or social reasons, or to avoid a loss in income, and
- their attempts to sell the property have been unsuccessful because the land has been designated for future acquisition.

If the acquiring authority supports the land owner's request the land will be acquired.

Accessing expert valuation advice

Land owners may engage a valuer when negotiating the purchase with the acquiring authority or in the compulsory acquisition process.

- The valuer is required to be an independent expert.
- The valuer must not act as an advocate.
- The valuer must be qualified in terms of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- The valuer must comply with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- The valuation must comply with professional standards.

Valuation fees reasonably incurred by the land owner in connection with compulsory acquisition form part of the compensation determined.

The professional membership associations for valuers are the Australian Property Institute, Royal Institute of Chartered Surveyors and Australian Valuers Institute and can provide lists of qualified valuers.

For more information

www.valuergeneral.nsw.gov.au
www.propertyacquisition.nsw.gov.au

For detailed information on how compensation for the compulsory acquisition of land is determined refer to the Valuer General's policy.

Compensation following compulsory acquisition

Contact us



02 6332 8188



8:30am - 5:00pm Mon - Fri



Property NSW
Valuation Services
Just Terms Compensation
PO Box 252
PARRAMATTA NSW 2124



Just_Terms@property.nsw.gov.au

We value your feedback

We want to be sure you are satisfied with our service and that the information we provide meets your needs.

When compensation is determined the Valuer General will ask you to complete a survey about the service you received.

We would appreciate your feedback.

You can phone us on 1300 011 141 or write to the Valuer General at:



feedback@ovg.nsw.gov.au



GPO Box 15
SYDNEY NSW 2001

Do you need an interpreter?

Please call TIS National on 131 450 and ask them to call Valuation

Services on **1800 110 038**



131 450



Definition of terms – Section 39 claim for compensation

When a proposed acquisition notice is issued, the land owner has 60 days to complete and lodge a section 39 claim for compensation form with the Valuer General.

It is important that the land owner includes full details of the claim being made. The information on this form is considered by valuers involved in assessing the amount of compensation.

The Act sets out the “heads of compensation” that a land owner can claim under and these are also listed in the claim for compensation form. These are:

- **market value** of land is the amount that would have been paid for the land if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer.

The ‘market value’ will disregard (for the purpose of determining the amount that would have been paid):

- o any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired, and
 - o any increase in the value of the land caused by the carrying out by the authority of the State, before the land is acquired, of improvements for the public purpose for which the land is to be acquired, and
- o any increase in the value of the land caused by its use in a manner or for a purpose contrary to law.
- **special value of the land to the land owner** is the financial value of any advantage, in addition to market value, to the person entitled to compensation which is incidental to the person’s use of the land
 - **loss attributable to severance** of land is the amount of any reduction in the market value of any other land of the person entitled to compensation which is caused by that other land being severed from other land owned by that person
 - **loss attributable to disturbance** can include any or all of the following:
 - o legal costs reasonably incurred by the persons entitled to compensation in connection with the compulsory acquisition of the land,
 - o valuation fees reasonably incurred by those persons in connection with the compulsory acquisition of the land,
 - o financial costs reasonably incurred in connection with the relocation of those persons (including legal costs but not including stamp duty or mortgage costs),

- o stamp duty costs reasonably incurred (or that might reasonably be incurred) by those persons in connection with the purchase of land for relocation (but not exceeding the amount that would be incurred for the purchase of land of equivalent value to the land compulsorily acquired),
 - o financial costs reasonably incurred (or that might reasonably be incurred) by those persons in connection with the discharge of a mortgage and the execution of a new mortgage resulting from the relocation (but not exceeding the amount that would be incurred if the new mortgage secured the repayment of the balance owing in respect of the discharged mortgage),
 - o any other financial costs reasonably incurred (or that might reasonably be incurred), relating to the actual use of the land, as a direct and natural consequence of the acquisition.
- **disadvantage resulting from relocation (formerly called solatium)** is compensation to a person for non-financial disadvantage resulting from the necessity of the person to relocate his or her principal place of residence (home) as a result of the acquisition. The maximum amount is set by the NSW Government. In assessing the amount of compensation for disadvantage resulting from relocation all relevant circumstances are to be taken into account, including:
 - o the interest in the land of the person entitled to compensation, and
 - o the length of time the person has resided on the land (and in particular whether the person is residing on the land temporarily or indefinitely), and
 - o the inconvenience likely to be suffered by the person because of his or her removal from the land, and
 - o the period after the acquisition of the land during which the person has been (or will be) allowed to remain in possession of the land.
 - **any increase or decrease in adjoining land** is any increase or decrease in the value of any other land owned by the land owner at the date of acquisition, which adjoins or is severed from the acquired land by reason of carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.



Valuer General's Policy

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Compensation following compulsory acquisition

What

This policy guides valuers on the methods to use, and factors to consider, when determining compensation for the compulsory acquisition of land or an interest in land.

How

Land may be acquired by an authority of the State for a public purpose when the land is not available for sale. The Valuer General determines compensation when an agreement for the purchase of the land cannot be reached between the land owner and the acquiring authority.

Valuers assist the Valuer General in this task by investigating and assessing the amount of compensation payable.

Compensation is assessed in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (Land Acquisition Act).

Why

This policy will ensure that:

- land owners are justly compensated for the acquisition of land
- compensation offered to land owners is in line with the Land Acquisition Act.

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1 Policy

1.1 Scope

Compulsory acquisition of land

land owner

public purpose

Where land is required for a public purpose an authorised acquiring authority will negotiate with the land owner to purchase the land. If the owner and the authority cannot come to an agreement on the compensation to be paid, the acquiring authority can compulsorily acquire the land.

The land is compulsorily acquired through publication of the acquisition in the government gazette, at which time ownership passes to the acquiring authority.

1.2 Assessing compensation

Interest in land

easement

fee simple in possession

interest in land

Land for which compensation is assessed includes any interest in land.

Interest in land means:

- a legal or equitable estate or interest in the land, or
- an easement, right, charge, power or privilege over, or in connection with, the land.

An interest in land which may be entitled to compensation can include:

- the owner of the fee simple
- the interest of a beneficiary of an easement, right of way or restriction of user over land
- a lessee's interest in the land
- the interest of a business operating under a lease or tenancy agreement on the land
- anyone having a legal financial interest in the land.

Generally, the acquiring authority will identify all compensable interests. However, if you identify an interest that has not already been identified you must notify the Valuer General's delegate who will notify the acquiring authority of that interest. You will be provided with advice on how to proceed with the determination from that point.

As a rule, you must only consider the interest of a tenant where a clearly defined tenancy arrangement is in place. This can be a legally executed lease that is current or expired. It may also be a verbal agreement to occupy between two parties.

Tenancies at will or holding over on an expired lease need to establish the probability a new lease would be agreed for that

interest to be considered. However, the continuance of the tenancy cannot be assumed to be without risk or for an indefinite period.

Matters to be considered when assessing compensation

When you determine the amount of compensation you must consider the requirements of section 55 of the Land Acquisition Act:

1.	The market value of the land on the date of its acquisition.
2.	Any special value of the land to the person on the date of its acquisition.
3.	Any loss attributable to severance.
4.	Any loss attributable to disturbance.
5.	The disadvantage resulting from relocation.
6.	Any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.

These matters, which are often referred to as the heads of compensation, are discussed below.

1. The market value of the land

The market value of land means the amount that would have been paid for the land, or interest in land, if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer.

When you determine the market value of the land on the date of its acquisition you must disregard:

- any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired, and
- any increase in the value of the land caused by the carrying out by the acquiring authority of the State, before the land is acquired, of improvements for the public purpose for which the land is to be acquired, and
- any increase in the value of the land caused by its use in a manner or for a purpose contrary to law.

The sum of the market value for all interests in the land must not exceed the market value of the land, at the date of acquisition.

The assumptions and the methods you use to assess the market value of the land are discussed at section 1.4 and section 1.6.

2. Any special value

Special value of the land to the land owner is the financial value of any advantage, in addition to market value which is incidental to the person's actual use of the land.

Special value has been said to represent the additional price that the land owner would be prepared to pay for the land rather than lose it.

The advantage must be specific to the land owner only. Special value does not include unique features of the site which enhance the value of the property since these are reflected in the market value.

Example

The site being acquired is a retail business and the owner of the business also occupies the adjoining site where he manufactures the goods sold in the shop. The land owner may value that site over the market value due to the advantage of operating from the adjoining site.

3. Any loss attributable to severance

Any loss attributable to severance of land is defined in the Land Acquisition Act as:

the amount of any reduction in the market value of any other land of the person entitled to compensation which is caused by that other land being severed from other land of that person.

Compensation for severance generally arises from the separation or division of the land owner's land as a result of the acquisition and the reduction in value of the retained parcel.

Example

A dairy farm is severed into two parcels of farmland by the construction of a highway. As a result, one of the retained parcels no longer has access to the dairy facilities. The land therefore suffers a loss in value.

When considering whether to provide compensation for severance the valuer must consider all factors, including whether the acquisition has increased the value of some land, (refer to page 8 - Increase or decrease in the value of other land).

4. Any loss attributable to disturbance

Loss attributable to disturbance refers to costs reasonably incurred by the land owner due to the acquisition. Disturbance includes any of the following:

Legal costs and valuation fees	a) Legal costs and b) valuation fees reasonably incurred by the land owner in connection with the compulsory acquisition of the land excluding costs incurred for acting as an agent for the owner.
Relocation costs	c) Costs reasonably incurred by the land owner in connection with their relocation (including legal costs but not transfer of land or business duty (stamp duty) or mortgage costs).
Stamp duty costs	d) Stamp duty costs reasonably incurred (or that might reasonably be incurred) by the land owner in connection with the purchase of land for relocation. The cost must not exceed the amount that would be incurred for the purchase of land of equivalent value to the land compulsorily acquired.
Mortgage costs	e) Costs reasonably incurred (or that might reasonably be incurred) by the land owner in connection with the discharge of a mortgage and the execution of a new mortgage. This amount must not exceed the amount that would be incurred if the new mortgage secured the repayment of the balance owing in respect of the discharged mortgage.
Other financial costs	f) Any other financial costs reasonably incurred (or that might reasonably be incurred) relating to the actual use of the land, as a direct and natural consequence of the acquisition.

Example

A typical assessment of disturbance costs for an owner occupied cottage incurred in connection with a compulsory acquisition would include the following:

- legal costs (section 59(a) of the Land Acquisition Act)
- valuation fees (section 59(b))
- legal cost on purchase of a replacement property of the same value (section 59(c))

- removal expenses (section 59(c))
- pest certificate (section 59(c))
- identification survey (section 59(c))
- building inspection (section 59(c))
- electricity and telephone reconnection (section 59(c))
- mail redirection (section 59(c))
- stamp duty on purchase of a property of the same value (section 59(d))
- discharge of mortgage costs (section 59(e))
- mortgage reinstatement cost on a replacement property (section 59(e)).

passive investor

Where an acquired property is held as an investment, and the land owner is a passive investor, legal and stamp duty costs for purchasing a replacement property will not apply. Legal and stamp duty costs are only payable where the costs incurred are related to the actual use of the land and are a direct and natural consequence of the acquisition.

Example

A developer who buys and sells land would be eligible for stamp duty and legal costs of a replacement property where the acquired land was part of his or her portfolio.

Costs for disturbance not yet incurred

The Land Acquisition Act requires that the Valuer General **must** have regard to the heads of compensation detailed in section 55. The assessment of compensation for disturbance must therefore be made whether the costs associated have actually been incurred or not.

Costs that have not occurred at the date of acquisition but which might reasonably be incurred are still to be considered. However it must be reasonable that they would be incurred, sometime in the not too distant future.

The term 'incurred' is to be interpreted broadly, as it relates to costs that might reasonably be expected to be incurred given the balance of probability.

Proof of expenditure

Proof of expenditure for disturbance costs should be sourced where available. Although land owners must submit a claim for compensation, providing details of costs is not a statutory requirement. Therefore the assessment of compensation is to include a reasonable allowance for costs attributable to disturbance whether or not proof of expenditure has been received.

Costs to be reasonably incurred

The Land Acquisition Act states that disturbance includes costs and fees that are reasonably incurred or that might reasonably be incurred. For a cost or fee to be considered allowable it must:

- relate directly to the acquisition process
- if not already incurred be likely to occur on the balance of probabilities
- return the land owner to an equivalent position to their position prior to the acquisition
- be relevant to the matter and not be whimsical or obstructive (see professional fees below)

Costs associated with relocation and those relating to the actual use of the land must be determined on the basis of returning the former owner to an equivalent situation they were in before the acquisition.

Example

If land prior to the acquisition had three phase electricity available and a partial acquisition removed that service, the cost of re-establishing that service would generally be payable.

In some cases the acquiring authority will carry out the reinstatement of the service. In these cases no further compensation should be assessed for these items.

Costs should not be determined on the basis of improving the land. Using the example of electricity supply given above, it would not be appropriate to calculate the cost of establishing three-phase electrical supply if it was not available prior to the acquisition.

Reasonable costs

The Land Acquisition Act requires that an amount attributable to disturbance be provided for costs or fees reasonably incurred. Courts have held that the “reasonableness” relates to the incurring of the costs, and not necessarily the costs themselves. Nevertheless exorbitant costs could not be said to be “reasonably incurred”.

Care should be taken to ensure that costs are not exorbitant and that direction given to professionals such as valuers and solicitors by the land owner relates directly to the acquisition.

Land owners are required to exercise the same level of care in incurring such cost as they would assuming that such costs were not payable by the acquiring authority.

Action taken by professionals must relate specifically to the acquisition and they must be guided by their professional

ethics and code of conduct. It must be noted that fees for professional services will vary and the land owner cannot be expected to have expertise in this area.

Whether the cost themselves are reasonable or exorbitant must be considered on a case by case basis. If the costs are thought to be exorbitant, proof may then be required. Where there is doubt, instructions and itemised accounts for the professional services should be obtained to confirm the appropriateness of the fees. Professional fees can also be vetted through professional associations such as the Law Society.

Where costs have been incurred by the land owner you must determine if the costs are reasonable by considering:

- whether documentary evidence has been provided
- whether they are within a reasonable range of similar costs incurred for similar services in the market.

Professional fees must relate to acquisition

Professional fees for services such as solicitors and valuers must relate directly to the acquisition and not to possible future actions taken by the land owner. It is reasonable for the land owner to claim for costs directly associated with advice prior to the determination of compensation and to also include costs for advice after the determination. Post determination advice should be limited to the professional explaining the outcome of the determination and the land owner's further rights and opportunities for appeal.

No amounts should be assessed for possible future court action which may or may not eventuate. If court action does occur the land owner will have a further opportunity to have costs considered.

5. Disadvantage resulting from relocation

The disadvantage resulting from relocation is compensation to a person for non-financial disadvantage resulting from the necessity of the person to relocate his or her principal place of residence (home) as a result of the acquisition.

The maximum amount payable for the disadvantage resulting from relocation is set by the State Government and adjusted annually. It is published in the NSW Government Gazette in late February each year.

In assessing the amount of compensation for the disadvantage resulting from relocation you must consider the NSW Government's Guidelines [Determination of compensation for disadvantage resulting from relocation](#).

6. Increase or decrease in the value of other land

When you determine compensation you must have regard to any increase or decrease in the value of land held by the land owner which adjoins or is severed from the acquired land due to the public purpose for which the land was acquired.

Where the value of such land is increased, because it has benefited from the public purpose, you must reduce the amount of compensation by the amount of that increase in value.

The value of the land may be reduced due to the impact of the public purpose on that land or due to its inability to be used for its previous existing use because it has been severed from the acquired land. In this case you must increase the compensation payable by the reduction in value.

1.3 Exclusions - compensation**Where the market value reflects an unrealised potential of land****highest and best use**

Market value must assume the highest and best use of the land.

In accordance with section 61 of the Land Acquisition Act when you assess the market value of land based on the potential use of the land rather than the current use of the land, you must not include:

- any financial advantage that would necessarily have been forgone in realising that potential, and
- any financial loss that would necessarily have been incurred in realising that potential.

In other words if the valuation is made for a higher use and not on the current use, a claim cannot be made for costs that would arise from the loss of the current use. To do so would be double recovery.

Where you assess market value on the basis of a higher potential use rather than the current use and the existing improvements add no value for that higher use, relocation costs are not paid.

For section 61 to apply, the potential higher use should be achievable within a reasonable timeframe.

Future profits

Lost profit for a business can be considered as a disturbance item, for the reasonable time it takes to relocate and re-establish a business.

No compensation is to be determined for lost future profits upon the extinguishment of a business as compensation will be for the market value of the business. See section 1.4, Compensation where a business is affected.

No compensation is to be determined for lost future profits due to the unrealised potential of land. Such potential is contained within market value.

Owner initiated acquisition in cases of hardship

environmental planning instrument

A land owner of land reserved for a public purpose under an environmental planning instrument or given written notice by an authority that land is designated for future acquisition, can ask the responsible authority to acquire the land.

To acquire the land the acquiring authority must be of the opinion that the owner will suffer hardship if there is any delay in the acquisition of the land under the Land Acquisition Act (section 24). An owner suffers hardship if:

(2) (a) the owner is unable to sell the land, or is unable to sell the land at its market value, because of the designation of the land for acquisition for a public purpose, and

(b) it has become necessary for the owner to sell all or any part of the land without delay:

(i) for pressing personal, domestic or social reasons, or

(ii) in order to avoid the loss of (or a substantial reduction in) the owner's income.

(3) However, if the owner of the land is a corporation to which this Division applies, the corporation does not suffer hardship unless it has become necessary for the corporation to sell all or any part of the land without delay:

(a) for pressing personal, domestic or social reasons of an individual who holds at least 20 per cent of the shares in the corporation, or

(b) in order to avoid the loss of (or a substantial reduction in) the income of such an individual.

If a land owner makes an application for hardship that is not accepted by the acquiring authority, they have the right to a merits-based review of the decision. This review would be undertaken by a suitably qualified independent person appointed by the Minister for Finance, Services and Property. The decision of the reviewer is final.

Under the hardship provision there is discretion as to whether to take into account:

- special value
- severance
- disturbance and
- the disadvantage resulting from relocation.

Following the compulsory acquisition of land, the Valuer General has the discretion to determine amounts under the above heads of compensation on a case by case basis.

All matters determined under the hardship provision should be referred to the Valuer General's delegate for direction.

Acquisition for the purpose of constructing a tunnel

Where land under the surface is compulsorily acquired for the construction of a tunnel, compensation is not payable unless:

- the surface of the overlying soil is disturbed, or
- the support of that surface is destroyed or injuriously affected by the construction of the tunnel, or
- any mines or underground working in or adjacent to the land are thereby rendered unworkable or are injuriously affected.

Where it is unclear whether these provisions should apply, the matter should be referred to the Valuer General's delegate for direction.

1.4 Valuation assumptions

The market value

Land which is identified for acquisition may be:

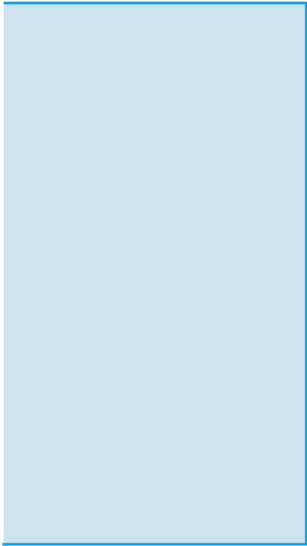
- the whole of an existing parcel of land (total acquisition)
- a part of an existing parcel of land or
- an interest in land (an easement or some other such right over land).

The total compensation for the market value of all interests in the land is not to exceed the market value of the land as a whole.

In assessing the market value of an interest, consideration should be given to the items listed in the following table:

Assumption/considerations	Comment/exceptions
The definition of market value	The market value of an interest in land at the date of acquisition is the amount that would have been paid for the interest if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer.
The market value includes the added value of improvements	The market value of land includes the value of any improvements on the land or to the land.

<p>The sum of interests in land is not to exceed the full fee simple in possession value of the land</p>	<p>There may be more than one interest to be compensated when land is acquired. Other interests could include easements, covenants, mortgages, leases, caveats and life interests. Where all interests in a parcel of land are acquired, the sum of all interests should not exceed the market value of the land unencumbered. At times, land will be acquired but the easements over the land will not. This corresponds with normal sale conditions where existing easements continue to apply to the land.</p>
<p>Value the land at its highest and best use</p>	<p>Care should be taken to determine the highest use possible for the land. That use may be the existing use or a redevelopment. Where redevelopment is the highest use, the cost of achieving that use, including demolition of existing improvements, must be considered.</p>
<p>The market value is not to reflect the reservation for the public purpose.</p>	<p>Generally land acquired for a public purpose is subject to a zoning or reservation for the public purpose. This imposes a legal constraint on possible development and hence market value.</p> <p>In assessing compensation, you must disregard the zoning or reservation for the public purpose for which the land is being acquired and adopt the zoning most likely to apply if there had been no zoning or reservation for the public purpose.</p> <p>When establishing the zone to adopt, you should consider the surrounding zoning in conjunction with the physical quality of the land and any environmental constraints such as flora and fauna.</p> <div data-bbox="862 1612 1372 1850"> <p>Example</p> <p>If you are valuing land zoned for open space and it is surrounded by residentially zoned land it is likely that the zone adopted will be residential.</p> </div>



When there is more than one public purpose zoning or reservation on the land being acquired, only the public purpose zoning for which the land is being acquired should be disregarded. However you need to have regard to all circumstances affecting the land including the potential for the land to be acquired for the second public purpose. If the underlying zoning cannot be determined by reference to adjacent land, the advice of an expert town planner will be required.

Compensation not to be less than market value

The Land Acquisition Act guarantees that, when land is acquired, the amount of compensation will not be less than market value. Compensation is to be made on just terms.

When determining the market value of land subject to acquisition, any reasonable doubt should be resolved in favour of the land owner ensuring that the compensation will not be less than market value.

However, in the event there is an increase in the value of the land owner's other land, the increase should be offset in the compensation.

Interest of mortgagee

Where land is acquired and is subject to one or more mortgages, the compensation is to be assessed without regard to the mortgage(s).

If compensation is payable in respect of a mortgagee's interest, the compensation paid to the owner of the land will be reduced by the amount of compensation to be paid to the mortgagee.

Treatment of GST

Where GST is paid in a property transaction, you must treat GST as part of the market price. This is consistent with a number of court decisions.

When you analyse sales of property any GST paid by the purchaser is to be included as part of the sale price.

Determinations of compensation issued under the Land Acquisition Act, will use the full market price. This price will include any GST which has formed part of the purchase price.

Where compensation is paid for disturbance, the full costs actually, or likely, to be incurred will form the basis of compensation, irrespective of a land owner's circumstances in relation to GST. Where disturbance is based on the extinguishment of a business, it will reflect the value of the business as a going concern and, consequently, there is no liability for GST.

However, where the valuer uses a hypothetical development model to determine the market value of land subject to acquisition, the treatment of GST as a cost in the actual development needs to be considered.

Compensation where a business is affected

Compensation related to a business which is located on the acquired land is considered as a loss attributable to disturbance.

In determining the amount of compensation where a business is affected you need to consider the NSW Government's Guidelines ['Determination of compensation following the acquisition of a business'](#).

Each land owner's circumstances will be different. If you consider the guidelines do not address a particular situation the matter should be referred to the Valuer General's delegate for direction.

1.5 Valuation methods used to determine market value

Direct comparison Direct comparison involves comparing market evidence with the subject property. Direct comparison is usually the primary method of valuation.

Use the direct comparison method to determine the market value of the property. When using this method you must:

- establish the highest and best use of the land
- consider all directly comparable market evidence
- consider all factors that influence the property's market value such as the land's location, size and shape, permitted uses and the condition and style of any buildings
- use an evidence based approach to make any adjustments between the market evidence and subject property.

Summation method

When using the summation method you must individually value the component parts of the land, including the added value of the improvements on the land to obtain the property's market value.

You may, for example determine the current market value of a rural property by separately considering the value of the land and the improvements.

The value of the land may be determined by direct comparison with sales of other farm land, excluding improvements.

The sheds and home may be valued by depreciation of the cost new or by calculating their added value to the land.

Where depreciation is applied to adjust the cost to build the improvements, the rate of depreciation used must be rationalised.

Take care when assessing the added value of unique or unusual improvements as they may not represent the highest and best use of the land. Even newly built improvements may not add the same level of value as the cost to build them.

You must be careful to ensure that the summation method does not produce a higher value than would reasonably be expected in that market. The cost of a building does not necessarily equal its added value and circumstances where the land has been over capitalised must be taken into account.

paired sales approach

The amount determined for the added value of improvements must be evidence based, using the paired sales approach.

Capitalisation method

capitalisation

capitalisation rate

market rent

When using the capitalisation method you must:

- determine the capitalisation rate by analysing sales of comparable investment properties
- determine the market rental based on the analysis of comparable rentals
- review the terms of the lease, especially in regard to rent review conditions
- consider the term of the lease and the likelihood of the income continuing.

Before and after method

public purpose

The before and after method is to be used to determine compensation where only part of the land is acquired.

The advantage of this method is that it captures the impact of severance and any increase or decrease in the value of adjoining land as well as the market value of the acquired land.

The before and after method of valuation is the primary method of determining compensation where only part of the land is acquired, however it may not be suitable if only a small

piece of land is acquired and the difference in value resulting from the acquisition is too small to be reliably measured. In these cases the piece meal method may be applied.

Using this method you must make two valuations:

1.	Value the property as if it were unaffected by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired (valuation of the original land before the acquisition).
2.	Value the residual land, assuming that any works that will be made by the acquiring authority have already been constructed and are in use (valuation of the parcel after the acquisition). You should seek advice from the acquiring authority about proposed action to adjust services, public utilities, relocate fences or alleviate any impact of the works.

The difference between the two valuations is the compensation payment for the partial acquisition which reflects any reduction in value of the remaining land.

Piece meal method

The piece meal method can also be used to determine compensation where only part of the land is acquired.

This method should be adopted when only a small piece of land is acquired and the difference in value resulting from the acquisition is too small to be reliably measured using the before and after method.

Using this method you must establish the market value of the whole property (excluding building improvements) to derive a rate per square metre or hectare and then apply the rate to the acquired land.

This method will not capture the loss due to severance or the increase/decrease in the value of other land.

This method is appropriate to use where the acquisition is not considered to have an impact on the value of the residue land.

Before adopting this method, you must consider the possible impact of the public purpose, on the value of the whole property.

Hypothetical Development Method

Where there is insufficient comparable sales evidence to make a reliable valuation the hypothetical development method can be used.

gross realisation

To derive the value of a site using the hypothetical development method you must:

1.	Estimate the total gross realisation of the site based on the hypothetical highest and best use of the land.
2.	Deduct the estimated cost of developing the site (including holding costs and developer's margin) from the total sales value.

Alternatively, if the highest and best use of the site is as an income producing building/suite of buildings you can :

1.	Estimate the net rental return which could be obtained from a hypothetical building which represents the highest and best use of the land.
2.	Capitalise the estimated net rental return to arrive at the improved value of the site.
3.	Deduct the estimated cost of developing the site (including holding costs and developer's margin) from the improved value of the site.

The cost of developing the site includes ancillary costs such as purchase fees and stamp duty.

Costs should include an allowance for interest payments based on 100 per cent funding for the project. However, interest payment calculations for development costs should reflect the progressive payment of these costs.

An allowance should also be made for the developer's margin which would be appropriate for the type of development being considered. This should reflect the appropriate margin a developer would require to allow for the risk associated with the development while still ensuring a reasonable return from the development.

The hypothetical development method generally relies on advice from a quantity surveyor or a comparison of unit costs and rates for similar development schemes. These can then be applied to the particular development being analysed. You should clearly state any assumptions made when you apply the method with reference to evidence, research and reasoning.

1.6 Market analysis

Wide analysis of sales evidence

You must analyse enough comparable market sales to establish the market value of the property at the acquisition date.

When analysing sales you should place the greatest weight on sales of properties with similar characteristics. Sales that have different characteristics or occur further in time from the valuation date will need to be adjusted to take those differences into account. All adjustments need to be rationalised. Sales analysis should be supported by photographs.

Care should be taken to avoid using sales which reflect an impact of the proposed public works, whether positive or negative. It may be necessary, where the impact of the public work is widespread, to obtain sales from other locations which, historically, have reflected similar value levels.

Rental analysis is required where the property or interest is valued using the capitalisation method. Sales showing rental returns and capitalisation rates are required to support the rental basis and applied capitalised values.

1.7 Communications

Transparency

It is important that the process is transparent and that all stakeholders have:

- input into the process
- access to relevant material
- the opportunity to scrutinise and query that material.

Valuation Services Coordinator

Valuation Services is to appoint a coordinator to assist the land owner through the determination process.

The coordinator is to be available to discuss issues with the land owner or their representative and the acquiring authority at any time during the process. This presents opportunities to provide additional submissions, discuss concerns, ask questions and where possible, attempt to settle any disagreements over matters of fact prior to the determination being made.

Independent advice

Where required you should obtain independent professional advice.

However, there may be times when using advice already provided by either the land owner or acquiring authority is appropriate. For example:

- where the parties agree to rely on the advice of one professional
- where it is unlikely for the advice to be subject to opinion and is likely to be consistent no matter which professional provided such advice

- where there is a very limited field of expertise and the best advice is considered to have been obtained.

All professional advice that has been relied upon must be appropriately referenced in the valuation report.

Where advice has been provided by other stakeholders and that advice is in conflict with the basis of the determination, you must rationalise why that advice was not accepted.

Property inspections

Property inspections are to be made during the valuation process. Where possible, you should obtain the permission of the land owner. Where the land owner refuses access to property for the purposes of an inspection the matter shall be referred to the Valuer General's delegate for direction.

Communication with land owners

You must make every effort to speak to the land owner or their representative in person to discuss their claim for compensation and address any issues or concerns they have.

Where a land owner refuses access to a property for inspection the matter should be referred to the Valuer General's delegate for direction.

You should encourage land owners to provide any supporting material that they would like to be considered as part of their claim for compensation.

Communication with acquiring authorities

You must speak with the relevant acquiring authority to understand and consider their issues and concerns. Supporting material relevant to the compensation matter must be shared with the acquiring authority.

Information provided by the land owner and the acquiring authority

When compensation is being determined the Valuer General will receive and consider all information provided by both the land owner and the acquiring authority.

The Valuer General is committed to full disclosure in the determination of compensation process. Consequently, all information considered by the Valuer General in determining compensation will be provided to both the land owner and the acquiring authority prior to finalisation of the determination.

Land owners who wish to claim compensation must lodge a claim in accordance with section 39 of the Land Acquisition Act with the acquiring authority or the Valuer General. The land owner should be aware that a copy of the information they provide to the Valuer General or acquiring authority will be given to the acquiring authority or Valuer General.

Following publication of the acquisition notice in the Government Gazette information provided by the acquiring authority is also to be provided to the land owner.

If a document is voluntarily given to the Valuer General over which a claim for privilege (either legal or commercial) might have been made the privilege is waived. This means that if legal privilege or commercial in confidence status is to be maintained the information or document should not be provided to the Valuer General.

The Valuer General's determination of compensation will consider all relevant material, information or documents provided, whether they are from the land owner, the acquiring authority, or independently commissioned by the Valuer General. The valuation report which accompanies the determination will reference these documents.

1.8 Valuation reports

Preliminary valuation report

Before the determination of compensation is finalised, Valuation Services must send the land owner and the acquiring authority the preliminary valuation report and any supporting information for their review. The report is to include the amount of compensation and how it was determined. The land owner and acquiring authority have 15 working days to provide feedback.

Any concerns raised by the land owner or acquiring authority must be addressed before the valuation report is finalised.

Valuation report standard

Valuation reports must clearly:

- rationalise the market value
- explain the rationale for any assumptions made
- address the land owner's claim for compensation
- respond to any issues or concerns raised by the land owner or acquiring authority
- detail all adjustments made between the market evidence and subject property and the rationale for those adjustments.

You must include supporting evidence and clearly rationalise the comparability or otherwise of sales and rental evidence.

A summary of technical information is to be included in the report as well as a list of supporting documents relied upon and or attached.

Material within the report such as photographs should be taken on inspection of the property. In instances where material is obtained from other sources you must have the

right to use the material and it must be appropriately referenced.

The report provided should be written in accordance with the current requirements of the Australian and New Zealand Valuation and Property Standards.

1.9 Issuing the determination of compensation

Determinations of Compensation are a final decision and so need to be made with the full understanding of all the issues. Therefore you are required to make all enquires necessary to gain a complete understanding of the factors affecting the level of compensation prior to issuing a determination. Every effort should be made to clarify and where possible resolve any issues of fact with the land owner and the acquiring authority prior to completion of your advice.

After the valuation report has been finalised, Valuation Services must issue the determination of compensation together with the valuation report to both the land owner and the acquiring authority.

The valuation report will include a list of all supporting information attached or previously provided.

Valuation Services will answer any questions the land owner or acquiring authority have about the valuation report and determination of compensation.

1.10 Quality control

Quality reviews

The quality assurance process is an important step in the management of issuing determinations of compensation valuations to acquiring authorities for the Valuer General.

It is expected that valuers undertaking determinations of compensation will adopt quality assurance processes, including revision of all calculations and peer review, prior to the final issue of a recommendation of determination of compensation.

Valuation Services is required to review all valuation reports to ensure there is consistency and accuracy in the assessment of compensation.

1.11 Post determination process

Valuer General's role following

The Valuer General's formal responsibilities under the Land Acquisition Act are completed when the Determination of

completion of the determination

Compensation is issued to the land owner and the acquiring authority. However, the Valuer General can amend a Determination of Compensation to correct any errors.

Objections against the compensation notice are between the land owner and the acquiring authority. However, valuers providing advice on behalf of the Valuer General are to make themselves available to discuss the Determination of Compensation with land owners and the acquiring authority involved if required.

Dispute resolution

The Land and Environment Court provides dispute resolution services through its conference process. Matters listed before the court will firstly be heard in a less formal situation than a full hearing, with different rules of evidence and less formal procedures.

The conferences can be used to settle the matter or the case can be moved to a full hearing.

2 References

2.1 Definitions

capitalisation	Capitalisation is a method used to determine the current market value of a property by converting the net income stream into a capital value using a single conversion factor.
capitalisation rate	Expression of risk and return as a percentage that is used to convert the net income in perpetuity from an investment into value at a given time.
easement	An easement is an acquired legal right enjoyed by the owner of land over the land of another.
environmental planning instrument	A legal document that regulates land use and development under state environmental planning policies and local environmental plans.
fee simple	Absolute title to land, free of any other claims against the title, which one can sell or pass to another by will or inheritance.
gross realisation	The property's value (or gross sales) upon completion of construction.
highest and best use	Valuation concept that refers to the possible use of a property that would give the highest market value. The use must be lawful, physically possible and financially feasible.
interest in land	Interest in land means: <ul style="list-style-type: none">• a legal or equitable estate or interest in the land, or• an easement, right, charge, power or privilege over, or in connection with, the land.
market rent	The estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.
paired sales approach	The paired sales approach refers to the analysis of the added value of improvements by comparing sales with no improvements or poor improvements to sales with improvements to determine how much those improvements add to the value of land.

passive investor	A passive investor is a person who acquires, builds or develops property with a view to holding it long-term to derive rent, but who may later sell the property. Conversely an active investor acquires, builds or develops property with a view to profiting from its sale.
public purpose	A “public purpose” means any purpose for which land may by law be acquired by compulsory process under the <i>Land Acquisition (Just Terms) Compensation Act 1991</i> .

2.2 Laws and policies

**Governing NSW
law**

[*Land Acquisition \(Just Terms Compensation\) Act 1991*](#)

(Land Acquisition Act)

**Related Valuer
General policy**

[*Compulsory acquisition advice*](#)

[*Compensation following compulsory acquisition involving
possible conflicts of interest*](#)

**NSW Government
Guidelines**

[*Property Acquisition*](#)

[*Determination of compensation following the acquisition of a
business*](#)

[*Determination of compensation for disadvantage resulting
from relocation*](#)

3 Context

3.1 Role of the Valuer General

The Valuer General for NSW

In NSW, the *Land Acquisition (Just Terms Compensation) Act 1991* requires that the Valuer General determine the compensation to be offered to the land owner and any other parties having a compensable interest in the land following a compulsory acquisition of land, or an interest in land, by a state or local government authority.

The Valuer General is an independent statutory office appointed under the *Valuation of Land Act 1916*.

The Valuer General delegates the determination of compensation process to Valuation Services, Property NSW. A Valuation Services valuer or private valuer contracted to Valuation Services will assess the amount of compensation for determination by the Valuer General or his or her delegate.

The Valuer General is committed to an open and transparent valuation process that is easy for land owners to understand.

3.2 Background

Compulsory acquisitions

Where land is acquired for a public purpose, compensation is paid to the owner of the land and any other parties having a compensable interest in the land. The Land Acquisition Act requires the acquiring authority to seek agreement with all parties, having an interest in that land, on the compensation which should be paid for the loss of their interest.

Where agreement cannot be reached, the interest will be compulsorily acquired. The Valuer General provides an independent determination of compensation for those interests which are compulsorily acquired.

Once acquired, all interests in land are vested in the acquiring authority, by notification in the NSW Government Gazette. The identified land will be freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over, or in connection with, the land.

Any compensable interest in the land will be converted to a right for compensation.

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Title: Compensation following compulsory acquisition

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Any enquiries relating to the policy may be addressed to the Office of the Valuer General at feedback@ovg.nsw.gov.au

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Document control

Approval

Name and position	Signature and date
Simon Gilkes, Valuer General	 16/08/2017

Version

Number	Status	Date	Prepared by	Comments
2.0	Final	24/08/2017	OVG	Policy updated: <ul style="list-style-type: none"> To reflect amendments to the Land Acquisition Act: <ul style="list-style-type: none"> change of name of solatium land owners can provide claim for compensation direct to Valuer General preliminary valuation report to be provided to land owner for feedback Determination of Compensation to be provided directly to land owner at same time as acquiring authority. stamp duty and legal not payable to passive investors for replacement property land owners rights to a merits based review if the acquiring authority do not accept their application for hardship. Reference to NSW guidelines for: <ul style="list-style-type: none"> Determinations of compensation following the acquisition of a business Determination of compensation for disadvantage resulting from relocation. Reference the name change of stamp duty to transfer of land or business duty. To clarify that legal and stamp duty costs for purchasing a replacement

				<p>property do not apply where an acquired property is held as an investment, and the land owner is a passive investor.</p> <ul style="list-style-type: none"> • Reflect administrative updates.
0.1	Final	18/12/2014	OVG	First release

Next review

Date	Comments
September 2018	May be reviewed sooner following release or as needed



Valuer General's Policy

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Compensation following compulsory acquisition

What

This policy guides valuers on the methods to use, and factors to consider, when determining compensation for the compulsory acquisition of land or an interest in land.

How

Land may be acquired by an authority of the State for a public purpose when it is not available for sale. The Valuer General determines compensation when an agreement for the purchase of the land cannot be reached between the landholder and the acquiring authority.

Valuers assist the Valuer General, in this task by investigating and assessing the amount of compensation payable.

Compensation is assessed in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (Land Acquisition Act).

Why

This policy will ensure that:

- landholders are justly compensated for the acquisition of land
- compensation offered to landholders is in line with the Land Acquisition Act.

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1 Policy

1.1 Scope

Compulsory acquisition of land

public purpose

Where land is required for a public purpose an authorised acquiring authority will negotiate with the landholder to purchase the land. If the owner and the authority cannot come to an agreement on the compensation to be paid, the acquiring authority can compulsorily acquire the land.

The land is compulsorily acquired through publication of the acquisition in the government gazette, at which time ownership passes to the acquiring authority.

Compulsory acquisition of land is the acquisition of the land by compulsory process under the Land Acquisition Act. Land includes any interest in land.

Land which is compulsorily acquired may be in private or public ownership. This policy is specific to land which is privately owned.

1.2 Assessing compensation

Interest in land

easement

fee simple in possession

interest in land

Land for which compensation is assessed must include any interest in land.

Interest in land means:

- a legal or equitable estate or interest in the land, or
- an easement, right, charge, power or privilege over, or in connection with, the land.

An interest in land which may be due compensation upon compulsory acquisition of land can include:

- the owner of the fee simple in possession
- the interest of a beneficiary of an easement, right of way or restriction of user over land
- a lessee's interest in the land
- the interest of a business operating under a lease or tenancy agreement on the land
- anyone having a legal financial interest in the land.

Generally, the acquiring authority will identify all compensable interests. However, if you identify an interest that has not already been identified you must notify the Valuer General or the Valuer General's delegate who will notify the acquiring authority of that interest. You will be provided with advice on how to proceed with the determination from that point.

As a rule, you must only consider the interest of a tenant where a clearly defined tenancy arrangement is in place. This can be a legally executed lease that is current or expired. It may also be a verbal agreement to occupy between two parties.

Tenancies at will or holding over need to establish the probability a new lease would be agreed for that interest to be considered, however it cannot be assumed to be without risk or for an indefinite period.

Matters to be considered when assessing compensation

When you determine the amount of compensation you must consider the requirements of section 55 of the Land Acquisition Act:

1.	The market value of the land on the date of its acquisition.
2.	Any special value of the land to the person on the date of its acquisition.
3.	Any loss attributable to severance.
4.	Any loss attributable to disturbance.
5.	Solatium
6.	Any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.

These matters, which are often referred to as the heads of compensation, are discussed below.

1. The market value of the land

The market value of land means the amount that would have been paid for the land, or interest in land, if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer.

When you determine the market value of the land on the date of its acquisition you must disregard:

- any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired, and
- any increase in the value of the land caused by the carrying out by the acquiring authority of the State, before the land is acquired, of improvements for the public purpose for which the land is to be acquired, and

- any increase in the value of the land caused by its use in a manner or for a purpose contrary to law.

The sum of the market value for all interests in the land must not exceed the market value of the land, at the date of acquisition.

The assumptions and the methods you use to assess the market value of the land are discussed at section 1.4 and section 1.6.

2. Any special value

claimant

Special value of the land to the claimant is the financial value of any advantage, in addition to market value which is incidental to the person's actual use of the land.

Special value may lead to an increase in compensation where the land acquired has some quality or potential for use in the hands of the claimant which makes it more valuable to them than a general purchaser in the market place. Special value has been said to represent the additional price that the claimant would be prepared to pay for the land rather than lose it.

The advantage must be specific to the claimant only. Special value does not include unique features of the site which enhance the value of the property since these are reflected in the market value.

Example where special value may arise

The site being acquired is a retail business and the owner of the business also occupies the adjoining site where he manufactures the goods sold in the shop. The claimant may value that site over the market value due to the advantage of operating from the adjoining site.

3. Any loss attributable to severance

Any loss attributable to severance of land is defined in the Land Acquisition Act as:

the amount of any reduction in the market value of any other land of the person entitled to compensation which is caused by that other land being severed from other land of that person.

Compensation for severance generally arises from the separation or division of the claimant's land as a result of the acquisition and the reduction in value of the retained parcel.

Example:

Severance results in the creation of two parcels of farmland

used for dairy. One of the retained parcels no longer has access to the dairy facilities due to severance by a highway. The land therefore suffers a loss in value.

Sometimes severance can increase the value because it creates an alternate, higher and better use. For example, where new roadwork provides access to formally inaccessible land the value of the retained land may increase. (refer to page 8 - increase or decrease in the value of other lands)

4. Any loss attributable to disturbance

Loss attributable to disturbance refers to costs reasonably incurred by the claimant due to the acquisition and includes any of the following:

Legal costs and valuation fees	a) Legal costs and b) valuation fees reasonably incurred by the claimant in connection with the compulsory acquisition of the land excluding costs incurred for acting as an agent for the owner.
Relocation costs	c) Costs reasonably incurred by the claimant in connection with their relocation (including legal costs but not stamp duty or mortgage costs).
Stamp duty costs	d) Stamp duty costs reasonably incurred (or that might reasonably be incurred) by the claimant in connection with the purchase of land for relocation. The cost must not exceed the amount that would be incurred for the purchase of land of equivalent value to the land compulsorily acquired.
Mortgage costs	e) Costs reasonably incurred (or that might reasonably be incurred) by the claimant in connection with the discharge of a mortgage and the execution of a new mortgage. This amount must not exceed the amount that would be incurred if the new mortgage secured the repayment of the balance owing in respect of the discharged mortgage.
Other financial costs	f) Any other financial costs reasonably incurred (or that might reasonably be incurred) relating to the actual use of the land, as a direct and natural consequence of the acquisition.

Where an acquired property is held as an investment, legal and stamp duty replacement costs will still apply.

A typical assessment of disturbance costs for an owner occupied cottage incurred in connection with a compulsory acquisition would include the following:

- legal costs (section 59(a) of the Land Acquisition Act)
- valuation fees (section 59(b))
- legal cost on purchase of a replacement property of the same value (section 59(c))
- removal expenses (section 59(c))
- pest certificate (section 59(c))
- identification survey (section 59(c))
- building inspection (section 59(c))
- electricity and telephone reconnection (section 59(c))
- mail redirection (section 59(c))
- stamp duty on purchase of a property of the same value (section 59(d))
- discharge of mortgage costs (section 59(e))
- mortgage reinstatement cost on a replacement property (section 59(e))

Costs for disturbance not yet incurred

The Land Acquisition Act requires that the Valuer General **must** have regard to the heads of compensation detailed in section 55. The assessment of compensation for disturbance must therefore be made whether the costs associated have actually been incurred or not.

Costs that have not occurred at the date of acquisition but which might reasonably be incurred are still to be considered. However it must be reasonable that they would be incurred, sometime in the not too distant future.

The term 'incurred' is to be given the broadest interpretation possible, as it relates to costs that might reasonably be expected to be incurred given the balance of probability.

Proof of expenditure Proof of expenditure for disturbance costs should be sourced where available. Although owners must submit a claim for compensation, providing details of costs is not a statutory requirement. Therefore the assessment of compensation is to include a reasonable allowance for costs attributable to disturbance whether or not proof of expenditure has been received.

Costs to be reasonably incurred

The Land Acquisition Act states that disturbance includes costs and fees that are reasonably incurred or that might reasonably be incurred. For a cost or fee to be considered allowable it must:

- relate directly to the acquisition process
- if not already incurred be likely to occur on the balance of probabilities
- return the owner to an equivalent position to their position prior to the acquisition
- be relevant to the matter and not be whimsical or vexatious (see professional fees below).

Costs associated with relocation and those relating to the actual use of the land must be determined on the basis of returning the former owner to an equivalent situation they were in before the acquisition. For example if land prior to the acquisition had three phase electricity available and a partial acquisition removed that service, the cost of re-establishing that service would in most cases be payable.

Costs should not be determined on the basis of improving the land. Using the example of electricity supply given above, it would not be appropriate to calculate the cost of establishing three-phase electrical supply if it was not available prior to the acquisition.

In some cases the acquiring authority will carry out the reinstatement of the service. In these cases no further compensation should be assessed for these items.

Reasonable costs

The Land Acquisition Act requires that an amount attributable to disturbance be provided for costs or fees reasonably incurred, accepting that the “reasonableness” relates to the incurring of the costs, and not necessarily the costs themselves. Nevertheless exorbitant costs could not be said to be “reasonably incurred”.

Care should be taken to ensure that costs are not exorbitant and that direction given to professionals such as valuers and solicitors by the landholder relates directly to the acquisition.

Owners are required to exercise the same level of care in incurring such cost as they would assuming that such costs were not payable by the acquiring authority.

Action taken by professionals must relate specifically to the acquisition and they must be guided by their professional ethics and code of conduct. It must be noted that fees for professional services will vary and the landholder cannot be expected to have expertise in this area.

Whether the cost themselves are reasonable or exorbitant must be considered on a case by case basis. If the costs are thought to be exorbitant, proof may then be required. Where there is doubt, instructions and itemised accounts for the professional services should be obtained to confirm the appropriateness of the fees. Professional fees can also be vetted through professional associations such as the Law Society.

Where costs have been incurred by the landholder you must determine if the costs are reasonable by considering:

- whether documentary evidence has been provided
- whether they are within a reasonable range of similar costs incurred for similar services in the market.

Professional fees must relate to acquisition

Professional fees for services such as solicitors and valuers must relate directly to the acquisition and not to possible future actions taken by the landholder. It is reasonable for the landholder to claim for costs directly associated with advice prior to the determination of compensation and to also include costs for advice after the determination. Post determination advice should be limited to the professional explaining the outcome of the determination and the landholder's further rights and opportunities for appeal.

For valuation and legal fees to be determined the owner must have engaged, or be in the process of engaging those services.

No amounts should be assessed for possible future court action which may or may not eventuate. If court action were to occur the landholder will have a further opportunity to have costs considered.

5. Solatium

Solatium is compensation to a person for non-financial disadvantage resulting from the necessity of the person to relocate his or her principal place of residence (home) as a result of the acquisition.

The maximum amount payable for solatium is set by the State Government and adjusted annually. It is published in the NSW Government Gazette in late February each year.

Compensation for solatium can be the whole amount allowable or a proportion of that amount.

In assessing the amount of compensation for solatium you must consider:

- the interest in the land of the person entitled to

compensation,

- the length of time the person has resided on the land (in particular, whether the person is residing on the land temporarily or indefinitely), and
- the inconvenience likely to be suffered by the person because of his or her removal from the land, and
- the period after the acquisition of the land during which the person has been (or will be) allowed to remain in possession of the land.

Compensation is payable in respect of solatium if the whole of the land is acquired or if any part of the land on which the residence is situated is acquired.

Only one payment of compensation in respect of solatium is payable for land with a single dwelling (even if there are two families occupying the single dwelling).

However, if more than one family resides on the same land in separate legally approved dwellings, a separate payment may be made for each family. A family can constitute a single person provided they are unrelated to other occupants on the land.

If separate payments of compensation are made, the maximum amount of solatium applies to each payment, and not to the total payments.

6. Increase or decrease in the value of other land

When you determine compensation you must have regard to any increase or decrease in the value of land held by the claimant which adjoins or is severed from the acquired land due to the public purpose for which the land was acquired.

Where the value of such land is increased, because it has benefited from the public purpose, you must reduce the amount of compensation by the amount of that increase in value.

The value of the land may be reduced due to the impact of the public purpose on that land or due to its inability to be used for its previous existing use because it has been severed from the acquired land. In this case you must increase the compensation payable by the corresponding amount.

1.3 Exclusions - compensation

Where the market value reflects an unrealised potential of land

In accordance with section 61 of the Land Acquisition Act when you assess the market value of land based on the potential use of the land rather than the current use of the land, you must not include:

- any financial advantage that would necessarily have been

forgone in realising that potential, and

- any financial loss that would necessarily have been incurred in realising that potential.

In other words if the valuation is made for a higher use and not on the current use, a claim cannot be made for costs that would arise from the loss of the current use. To do so would be double recovery.

Market value must assume the highest and best use.

Where you assess market value on the basis of a higher potential use rather than the current use and the existing improvements add no value for that higher use, relocation costs are not paid.

For section 61 to apply, the potential higher use should be achievable within a reasonable timeframe.

Future profits

Lost profit for a business or other enterprise can be considered as a disturbance item, for the reasonable time it takes to relocate and re-establish a business enterprise.

No compensation is to be determined for lost future profits upon the extinguishment of a business as compensation will be for the market value of the business. See section 1.4, Compensation where a business is affected.

No compensation is to be determined for lost future profits due to the unrealised potential of land. Such potential is contained within market value.

Owner initiated acquisition in cases of hardship

environmental planning instrument

A landholder owning land reserved for a public purpose under an environmental planning instrument or given written notice by an authority that land is designated for future acquisition, can give notice to the responsible acquiring authority requiring acquisition of the land.

To acquire the land the acquiring authority must be of the opinion that the owner will suffer hardship if there is any delay in the acquisition of the land under the Land Acquisition Act (section 24).

An owner suffers hardship if:

- (2) (a) the owner is unable to sell the land, or is unable to sell the land at its market value, because of the designation of the land for acquisition for a public purpose, and
- (b) it has become necessary for the owner to sell all or any part of the land without delay:
 - (i) for pressing personal, domestic or social reasons, or
 - (ii) in order to avoid the loss of (or a substantial reduction in) the owner's income.

(3) However, if the owner of the land is a corporation to which this Division applies, the corporation does not suffer hardship unless it has become necessary for the corporation to sell all or any part of the land without delay:

- (a) for pressing personal, domestic or social reasons of an individual who holds at least 20 per cent of the shares in the corporation, or
- (b) in order to avoid the loss of (or a substantial reduction in) the income of such an individual.

Under the hardship provision there is a discretion as to the requirement for the determination of compensation for:

- special value
- severance
- disturbance and
- solatium.

Following the compulsory acquisition of land, the Valuer General has the discretion to determine amounts under the above heads of compensation on a case by case basis. All matters determined under the hardship provision should be referred to the Valuer General or his or her delegate for direction.

Acquisition for the purpose of constructing a tunnel

Where land under the surface is compulsorily acquired for the construction of a tunnel, compensation is not payable unless:

- the surface of the overlying soil is disturbed, or
- the support of that surface is destroyed or injuriously affected by the construction of the tunnel, or
- any mines or underground working in or adjacent to the land are thereby rendered unworkable or are injuriously affected.

1.4 Valuation assumptions

The market value

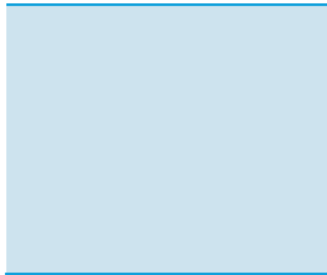
Land which is identified for acquisition may be:

- the whole of an existing parcel of land (total acquisition)
- a part of an existing parcel of land or
- an interest in land (an easement or some other such right over land).

The total compensation for the market value of all interests in the land is not to exceed the market value of the land as a whole.

In assessing the market value of an interest, consideration should be given to the items listed in the following table:

Assumption/considerations	Comment/exceptions
The definition of market value	The market value of an <u>interest in land</u> at the date of acquisition is the amount that would have been paid for the <u>interest</u> if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer.
The market value includes the added value of improvements	The market value of land includes the value of any improvements on the land or to the land.
The sum of interests in land is not to exceed the full fee simple in possession value of the land	There may be more than one interest to be compensated when land is acquired. Other interests could include easements, covenants, mortgages, leases, caveats and life interests. Where all interests in a parcel of land are acquired, the sum of all interests should not exceed the market value of the land unencumbered. At times, land will be acquired but the easements over the land will not. This corresponds with normal sale conditions where existing easements continue to apply to the land.
Value the land at its highest and best use	<p>Highest and best use refers to the possible use of a property that would give the highest market value. The use must be lawful, physically possible and financially feasible.</p> <p>Care should be taken to determine the highest use possible for the land. That use may be the existing use or a redevelopment. Where redevelopment is the highest use, the cost of achieving that use, including demolition of existing improvements, must be considered.</p>
The market value is not to reflect the reservation for the public purpose.	Where the current zoning reflects the public purpose for which the land has been acquired, it is to be set aside. The zoning most likely to apply if not for the public purpose is to be adopted. This zoning will often reflect the zoning of adjoining and surrounding land.



If the underlying zoning cannot be determined by reference to adjacent land, the advice of an expert town planner will be required.

On occasions a property may have more than one layer of public purpose zoning, eg a zoning by a roads authority and also a zoning by a local council.

Market value not to reflect the public purpose

When assessing the market value of the land to be acquired you must ignore any increase or decrease in its value which results from the carrying out or the proposal to carry out the public purpose for which the land was acquired.

Generally land acquired for a public purpose is subject to a zoning reservation for future acquisition. In effect this imposes a legal constraint on possible development and hence market value.

In assessing compensation, you must disregard the reservation zoning for the public purpose for which the land is being acquired and adopt the zoning most likely to apply if there had been no reservation zoning for the public purpose.

When there is more than one public zoning on the land being acquired, only the public purpose zoning for which the land is being acquired should be disregarded.

However you need to have regard to all circumstances affecting the land including the potential for the land to be acquired for the second public purpose.

When establishing the zone to adopt you should consider the surrounding zoning in conjunction with the physical quality of the land and any environmental constraints such as flora and fauna.

For example, if you are valuing land reserved for road widening, and it is surrounded by residentially zoned land it is likely that the zone adopted will be residential.

Compensation not to be less than market value

The Land Acquisition Act guarantees that, when land is acquired, the amount of compensation will not be less than market value. Compensation is to be made on just terms.

When determining the market value of land subject to acquisition, any reasonable doubt should be resolved in favour of the former owner ensuring that the compensation will not be less than market value.

However in the event there is an increase in the value of the owners other land, the increase should be offset in the compensation.

Interest of mortgagee

Where land is acquired and is subject to one or more mortgages, the compensation is to be assessed as if the land was not subject to a mortgage.

If compensation is payable in respect of a mortgagee's

interest, the compensation paid to the owner of the land will be reduced by the amount of compensation to be paid to the mortgagee.

Treatment of GST

Where GST is paid in a property transaction, you must treat GST as part of the market price. This is consistent with a number of court decisions.

When you analyse sales of property any GST paid by the purchaser is to be included as part of the sale price.

Statutory valuations issued on behalf of the Valuer General, including determinations of compensation issued under the Land Acquisition Act, will use the full market price. This price will include any GST which has formed part of the purchase price.

Where compensation is paid for disturbance, the full costs actually, or likely, to be incurred will form the basis of compensation, irrespective of a claimant's circumstances in relation to GST. Where disturbance is based on the extinguishment of a business, it will reflect the value of the business as a going concern and, consequently, there is no liability for GST.

However, where the valuer uses a hypothetical development model to determine the market value of land subject to acquisition, the treatment of GST as a cost in the actual development needs to be considered.

Compensation where a business is affected

Compensation related to a business which is located on the acquired land is considered as a loss attributable to disturbance.

It is assessed on the basis of either relocating or extinguishing the business.

The landholder's actual intentions for the future of the business are not necessarily relevant when you establish whether to assess the compensation based on relocation or extinguishment.

You must decide the most appropriate method given the circumstances. For instance a café in a high street location in an area with shops of a similar standard could easily relocate. However a unique waterfront restaurant in a rare location would have difficulty re-establishing in the area.

Compensation for the relocation of a business should generally not exceed the compensation that would be determined for the extinguishment of the business.

Relocating the business	<p>You must consider all reasonable costs associated with the relocation of the business.</p> <p>Costs will include:</p> <ul style="list-style-type: none"> • loss of profits during relocation and re-establishment period • advertising costs • advising clients of the relocation • storage costs for equipment • fitout specific to the business • stock losses
Extinguishing the business	<p>Compensation for the extinguishment of the business is based on the market value of the business on a walk in walk out basis.</p> <p>You must be appropriately skilled and experienced in business valuations to assess this type of compensation.</p>

If the compensation is based on extinguishing the business, the compensation will be paid for stock losses, incurred in a forced sale of stock. Fixtures such as plant and equipment are usually part of the business, and are included in the business value.

However, stock in trade and other items of personal property do not, by the compulsory land acquisition process, become the property of the acquiring authority.

1.5 Provision of information

Information provided by the landholder and the acquiring authority

When compensation is being determined the Valuer General will receive and consider all information provided by both the landholder and the acquiring authority.

Landholders often provide information to support their claim for compensation under section 39 of the Land Acquisition Act. Claims must be made to the acquiring authority and this information is then provided to the Valuer General.

There are times when the landholder will provide information directly to the Valuer General. In this case the Valuer General will accept the information, but the

landholder should be aware that a copy of the information will be given to the acquiring authority. Following publication of the acquisition notice in the Government Gazette information provided by the acquiring authority is also to be provided to the landholder.

If a document is voluntarily given to the Valuer General over which a claim for privilege (either legal or commercial) might have been made the privilege is waived. This means that if legal privilege or commercial in confidence status is to be maintained the information or document should not be provided to the Valuer General.

The Valuer General's determination of compensation will consider all relevant material information or documents provided, whether they are from the landholder, the acquiring authority, or independently commissioned by the Valuer General. The valuation report which accompanies the determination will include these documents.

1.6 Valuation methods used to determine market value

Direct comparison Direct comparison involves comparing market evidence with the subject property. Direct comparison is usually the primary method of valuation.

Use the direct comparison method to determine the market value of the property. When using this method you must:

- establish the highest and best use of the land
- consider all directly comparable market evidence
- consider all factors that influence the property's market value such as the land's location, size and shape, permitted uses and the condition and style of any buildings
- use an evidence based approach to make any adjustments between the market evidence and subject property.

Summation method

When using the summation method you must individually value the component parts of the land and improvements on the land to obtain the property's market value.

You may, for example determine the current market value of a rural property by separately considering the value of the land and the improvements.

The value of the land maybe determined through the

analysis and comparison of other vacant farm land. While the sheds and home may be valued by depreciation of the cost new.

Where depreciation is applied to adjust the cost to build the improvements, the rate of depreciation used must be rationalised.

Take care when assessing the added value of unique or unusual improvements as they may not represent the highest and best use of the land. Even newly built improvements may not add the same level of value as the cost to build them.

You must be careful to ensure that the summation method does not produce a higher value than would reasonably be expected in that market. Cost does not necessarily equal value and circumstances where the land has been over capitalised must be taken into account.

Capitalisation method

capitalisation

capitalisation rate

market rent

When using the capitalisation method you must:

- determine the capitalisation rate by analysing sales of comparable investment properties
- determine the market rental based on the analysis of comparable rentals
- review the terms of the lease, especially in regard to rent review conditions
- consider the term of the lease and the likelihood of the income continuing.

Before and after method

public purpose

The before and after method can be used to determine compensation where only part of the land is acquired.

The advantage of this method is that it captures the impact of severance and any increase or decrease in the value of adjoining land as well as the market value of the acquired land.

Using this method you must make two valuations, usually using the direct comparison method.

1. Value the property as if it were unaffected by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired (valuation of the original land before the acquisition).
2. Value the residual land, assuming that any works that will be made by the acquiring authority have already been constructed and are in use (valuation of the parcel after the acquisition).

You should seek advice from the acquiring authority about proposed action to adjust services, public utilities, relocate fences or alleviate any impact of the works.

The difference between the two valuations is the compensation payment for the partial acquisition which reflects any reduction in value of the remaining land.

Piece meal method

The piece meal method can also be used to determine compensation where only part of the land is acquired.

This method should be adopted when only a small piece of land is acquired or significant improvements are located on the residue land and the difference in value resulting from the acquisition is too small to be reliably measured using the before and after method.

Using this method you must establish the market value of the whole parcel to derive a rate per square metre and then apply the rate to the acquired land.

This method will not capture severance or the increase/decrease in adjoining land value.

This method is appropriate to use where the acquisition is not considered to have an impact on the value of the residue land.

Before adopting this method, you must assess the possible impact of the public purpose, on the value of the whole parcel.

Hypothetical Development Method

gross realisation

Where there are not enough sales and the sales that are available lack comparability the hypothetical development method can be used.

To derive the value of a site suitable for redevelopment using the hypothetical development method you must:

1. Estimate the total gross realisation of the site based on the hypothetical highest and best use of the land.
2. Deduct the estimated cost of developing the site (including holding costs and developer's margin) from the total sales value.

Alternatively, if the highest and best use of the site is as an income producing building/suite of buildings you can :

1. Estimate the net rental return which could be obtained from a hypothetical building which represents the

	highest and best use of the land.
2.	Capitalise the estimated net rental return to arrive at the improved value of the site.
3.	Deduct the estimated cost of developing the site (including holding costs and developer's margin) from the improved value of the site.

The cost of developing the site includes ancillary costs such as purchase fees and stamp duty. Costs should include an allowance for interest payments based on 100 per cent funding for the project. However, interest payment calculations for development costs should reflect the progressive payment of these costs.

An allowance should also be made for the developer's margin which would be appropriate for the type of development being considered. This should reflect the appropriate margin a developer would require to allow for the risk associated with the development while still ensuring a reasonable return from the development.

The hypothetical development method generally relies on advice from a quantity surveyor or a comparison of unit costs and rates for similar development schemes. These can then be applied to the particular development being analysed. You should clearly state any assumptions made when you apply the method with reference to evidence, research and reasoning.

1.7 Market analysis

Wide analysis of sales evidence

You should, if available, analyse enough comparable market sales to establish the market value of the property at the acquisition date.

Sales that occur further in time from the valuation date will need to be adjusted to the date of acquisition. Sales analysis should be supported by photographs. When analysing sales you should place the greatest weight on sales of properties with similar characteristics. All adjustments need to be rationalised.

Rental analysis is required where the property or interest is valued using the capitalisation method. Sales showing rental returns and capitalisation rates of properties are required to support the rental basis and applied capitalised values. Care should be taken to avoid using sales which reflect an impact of the proposed public works. Such sales may reflect either a positive or negative impact depending on the circumstances

specific to the property.

It may sometimes be necessary, where the impact of the public work is widespread, to obtain sales from other locations which, historically, have reflected similar value levels.

1.8 Valuation reports

Valuation report standard

All valuation reports must clearly explain the rationale for any assumptions made and address the landholders claim for compensation.

You must include supporting evidence and clearly rationalise the comparability or otherwise of sales and rental evidence.

A summary of technical information is to be included in the report with full supporting documents annexed.

Material within the report such as photographs should be taken on inspection of the property. In instances where material is obtained from other sources it must be appropriately referenced.

The report provided should be written in accordance with the requirements of the International Valuation Standards 2013.

Independent advice

Where required you should obtain independent professional advice. There may be times when using advice already provided by either the landholder or acquiring authority is appropriate. For example:

- where the parties agree to rely on the advice of one professional
- where it is unlikely for the advice to be subject to opinion and is likely to be consistent no matter which professional provided such advice
- where there is a very limited field of expertise and the best advice is considered to have been obtained.

All professional advice must be appropriately referenced and annexed to the valuation report.

Where advice has been provided by other stakeholders and that advice is in conflict with the basis of the determination, you must rationalise why that advice was not accepted.

Property inspections and communication with landholders

Property inspections should be made during the valuation process. Where possible, you should obtain the permission of the landholder.

You should speak to landholders in person to address any issues or concerns they have. You should also encourage

landholders to provide any supporting material that they feel is relevant to the determination.

It is important that the process is transparent and that all stakeholders have access to relevant material and the opportunity to scrutinise and query that material.

1.9 Post determination process

Valuer Generals role following completion of the determination

The Valuer General's formal responsibilities under the Land Acquisition Act are completed when the Determination of Compensation is issued to the acquiring authority. However, the Valuer General can amend a Determination of Compensation to correct any errors.

Determinations of Compensation are a final decision and so need to be made with the full understanding of all the issues. Therefore you are required to make all enquires necessary to gain a complete understanding of the factors affecting the level of compensation. Every effort should be made to clarify and where possible resolve any issues of fact with the owner and the acquiring authority prior to completion of your advice.

Objections against the amount of compensation determined are between the former owner and the acquiring authority. However, valuers providing advice on behalf of the Valuer General are to make themselves available to discuss the Determination of Compensation with owners and the authority involved.

Appeals as to the amount of compensation are made against the acquiring authority not the Valuer General.

The Land and Environment Court provides dispute resolution services through its conference process. Matters may be settled through these conferences or may proceed to a full hearing.

1.10 Quality control

Quality reviews

The quality assurance process is an important step in the management of issuing determinations of compensation valuations to acquiring authorities for the Valuer General.

It is expected that valuers undertaking determinations of compensation will adopt quality assurance processes, including revision of all calculations and peer review, prior to the final issue of a recommendation of determination of compensation.

Land and Property Information are required to review all valuation reports to ensure there is consistency and accuracy in the assessment of compensation.

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2 References

2.1 Definitions

capitalisation	Capitalisation is a method used to determine the current market value of a property by converting the net income stream into a capital value using a single conversion factor.
capitalisation rate	Expression of risk and return as a percentage that is used to convert the net income in perpetuity from an investment into value at a given time.
claimant	A claimant is a person or legal entity entitled to a claim for compensation after the compulsory acquisition of land or an interest in land.
easement	An easement is an acquired legal right enjoyed by the owner of land over the land of another.
environmental planning instrument	A legal document that regulates land use and development under state environmental planning policies and local environmental plans.
fee simple in possession	Absolute title to land, free of any other claims against the title, which one can sell or pass to another by will or inheritance.
gross realisation	The property's value (or gross sales) upon completion of construction.
interest in land	Interest in land means: <ul style="list-style-type: none"> (a) a legal or equitable estate or interest in the land, or (b) an easement, right, charge, power or privilege over, or in connection with, the land
market rent	The estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.
public purpose	A "public purpose": means any purpose for which land may by law be acquired by compulsory process under the <i>Land Acquisition (Just Terms) Compensation Act 1991</i> .

2.2 Laws and policies

Governing NSW law	<i>Land Acquisition (Just Terms Compensation) Act 1991</i> (Land Acquisition Act)
Related Valuer General policy	N/A

3 Context

3.1 Role of the Valuer General

The Valuer General for NSW

In NSW, the *Land Acquisition (Just Terms Compensation) Act 1991* requires that the Valuer General is responsible for the determination of compensation to be offered to the former owner and any other parties having a compensable interest in the land following a compulsory acquisition of land, or an interest in land, by a state or local government authority.

The Valuer General is an independent statutory office appointed under the *Valuation of Land Act 1916*.

The Valuer General delegates the determination of compensation process to Land and Property Information (LPI). An LPI valuer or private valuer contracted to LPI will assess the amount of compensation for determination by the Valuer General or his or her delegate.

The Valuer General is committed to an open and transparent valuation process that is easy for landholders to understand.

3.2 Background

Compulsory acquisitions

Where land is acquired for a public purpose, compensation is paid to the owner of the land and any other parties having a compensable interest in the land. The Land Acquisition Act requires the acquiring authority to seek agreement with all parties, having an interest in that land, on the compensation which should be paid for the loss of their interest.

Where agreement cannot be reached, the interest will be compulsorily acquired. The Valuer General provides an independent determination of compensation for those interests which are compulsorily acquired.

Once acquired, all interests (gazetted) in land are vested in the acquiring authority, by written notification printed in the NSW Government Gazette. The identified land will be freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over, or in connection with, the land.

Any compensable interest in the land will be converted to a right for compensation

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Title: Compensation following compulsory acquisition

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Document control

Approval

Name and position	Signature and date
Simon Gilkes, Valuer General	 18/12/2014

Version

Number	Status	Date	Prepared by	Comments
0.1	Final	18/12/2014	OVG	First release

Next review

Date	Comments
November 2015	May be reviewed sooner following release or as needed

WestConnex projects where work commenced and/or determinations of compensation were issued

	No of acquisitions where the Valuer General commenced work	No of acquisitions where land owners and RMS reached agreement	No of acquisitions where agreement was not reached and the Valuer General determined compensation	Total compensation determined by the Valuer General	Date Compensation was Determined	No of preliminary reports issued to land owners	No of face to face conferences with land owners where the Valuer General determined compensation
1. WestConnex & WestConnex Stage 2	43	35	8	\$35,840,124	19 December 2014 3 July 2015	Prior to Government reforms	8
2. WestConnex Motorway Stage 2B	13	2	11	\$510,400	3 July 2015	Prior to Government reforms	11
3. WestConnex M4 East Motorway	16	12	4	\$6,560,623	4 September 2015 5 August 2016	Prior to Government reforms	4
4. WestConnex Motorway Stage 1(b) M4 East	262	211	51	\$67,760,390	13 November 2015 18 December 2015 12 February 2016 19 February 2016	Prior to Government reforms	51
5. WestConnex Motorway Stage 2 M5 East Airport Link	33	30	3	\$2,405,868	18 December 2015 12 February 2016	Prior to Government reforms	3
6. M5 East Airport Link Stage 2	27	17	10	\$28,571,045	22 April 2016 29 April 2016 20 May 2016 27 May 2016 8 July 2016	Prior to Government reforms.	10
7. WestConnex M5 Motorway	47	34	13	\$11,556,975	22 April 2016 29 April 2016 13 May 2016 28 July 2017	One matter related to government land however due to project stress a preliminary report was not issued	13

	No of acquisitions where the Valuer General commenced work	No of acquisitions where land owners and RMS reached agreement	No of acquisitions where agreement was not reached and the Valuer General determined compensation	Total compensation determined by the Valuer General	Date Compensation was Determined	No of preliminary reports issued to land owners	No of face to face conferences with land owners where the Valuer General determined compensation
8. WestConnex Motorway Stage 2	20	16	4	\$4,203,894	29 April 2016	Prior to Government reforms	4
9. WestConnex Stage 2 M5 Motorway New	62	45	17	\$31,119,169	16 September 2016 30 September 2016 4 November 2016 2 December 2016 24 February 2017 14 July 2017 11 August 2017 29 September 2017 2 March 2018	3 preliminary reports issued. Preliminary reports were not issued on other matters due to project stress	17
10. WestConnex (M5 East) Motorway	4	0	4	\$266,600	14 July 2017	4	4
11. WestConnex Stage 3 – M4-M5 Motorway	48	24	24	\$129,663,183	15 September 2017 10 November 2017 1 December 2017 8 December 2017 9 February 2018 23 February 2018	24	24
12. WestConnex Enabling Roads Project	6	6	0	N/A	N/A	N/A	N/A
13. WestConnex Stage 3 – M4-M5 Motorway Link Project	16	16	0	N/A	N/A	N/A	N/A
TOTAL	597	448	149	\$318,458,271		31	149

Location, type of land and interests for WestConnex projects where determinations of compensation were issued

	Location of land	Residential land	Commercial / Industrial land	Government owned land	Residential leasehold interests	Commercial / Industrial leasehold interests	Other interests	TOTAL
1. WestConnex & WestConnex Stage 2	St Peters		3			5		8
2. WestConnex Motorway Stage 2B	St Peters					11		11
3. WestConnex M4 East Motorway	Haberfield	2		2				4
4. WestConnex Motorway Stage 1(b) M4 East	13 x Ashfield 4 x Concord 25 x Haberfield 5 x Homebush 4 x Nth Strathfield	20	9	3	3	16		51
5. WestConnex Motorway Stage 2 M5 East Airport Link	2 x St Peters 1 x Beverly Hills		1	1		1		3
6. M5 East Airport Link Stage 2	St Peters	6	1		1	1	1x caveat	10
7. WestConnex M5 Motorway	12 x St Peters 1 x Alexandria	7			3	3		13
8. WestConnex Motorway Stage 2	Kingsgrove		1			3		4
9. WestConnex Stage 2 M5 Motorway New	7 x Alexandria 1 x Beverly Hills 5 x Mascot 4 x St Peters		9	3		5		17

	Location of land	Residential land	Commercial / Industrial land	Government owned land	Residential leasehold interests	Commercial / Industrial leasehold interests	Other interests	TOTAL
10. WestConnex (M5 East) Motorway	Arncliffe			4				4
11. WestConnex Stage 3 – M4-M5 Motorway	12 x Annandale 12 x Rozelle		7			17		24
12. WestConnex Enabling Roads Project	Mascot	N/A	N/A	N/A	N/A	N/A	N/A	N/A
13. WestConnex Stage 3 – M4-M5 Motorway Link Project	Annandale Rozelle	N/A	N/A	N/A	N/A	N/A	N/A	N/A
TOTAL		35	31	13	7	62	1	149